STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

TIFFANY REICHARD,

Defendant-Appellant.

SUPREME COURT NO. 157688

COURT OF APPEALS NO. 340732

LOWER COURT NO. 16-005052-FC

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ANSWER TO APPLICATION FOR LEAVE TO APPEAL

The People of the State of Michigan asks this Court to deny this interlocutory application, stating:

1. Defendant is presently charged with open murder. MCL 750.316.

2. In an order dated October 2, 2017, Jackson County Circuit Court Judge Thomas Wilson granted defendant's motion to present a duress defense.

3. Then, on April 17, 2018, the Court of Appeals reversed in a published opinion.

4. This Court should now deny this interlocutory application, for two reasons. First, the Court of Appeals was right. Second, defendant has failed to explain why this Court should consider this issue now, rather than in an appeal by right (assuming that she is eventually convicted of anything and thereafter appeals).

In 2009, while dating Michael Beatty, defendant agreed to help him rob Matthew Cramton. (Preliminary Examination Transcript [PETr], pp 36, 38). She knocked on Cramton's door while Beatty hid nearby. (PETr, p 38). Beatty, who had been planning the robbery for a week, then entered the house with a gun and a knife. (PETr, pp 39, 40, 73, 77). He later came back out covered in blood. (PETr, p 39). While inside, he stabbed Cramton 91 times, 29 to the head and neck, eight to the left shoulder and arm, three to the right side abdomen, 46 to the chest, and five to the back. (PETr, pp 15-16). The police later found Cramton's body wedged against the wall on a mattress. (PETr, p 9). His hands were bound with electrical cord and he was gagged. (PETr, p 9).

Defendant said that Beatty was controlling and abusive. (PETr, p 73). She said that she was afraid of the repercussions if she did not go along. (PETr, p 40). Afterwards, she helped dispose of Beatty's bloody clothes. (PETr, pp 39-40).[1]

First, the Court of Appeals correctly ruled that duress is not a defense to murder. Even the trial court knew that its decision is incorrect: "I'll probably get reversed." (Motion Hearing Transcript [MTr], p 15). Every Michigan case that has ever considered

[1] The Court of Appeals' opinion states: "Defendant apparently will take the position that she was threatened or coerced into participating in the armed robbery and served as a lookout, but that she was not in the house during the robbery nor knew of the murder until after the fact." (P 1 n 1). At oral arguments, Judge David Sawyer stated that he did not see any duress in the record.

the issue since 1980 has said that duress is not a defense to murder, even felony murder, even for an aider and abettor.

As stated in *People v Gimotty*, 216 Mich App 254, 257; 549 NW2d 39 (1996), "[i]t is well settled that duress is not a defense to homicide." In *Gimotty*, unknown to the defendant, the co-defendant had stolen some dresses from a store. The co-defendant then struck the defendant on the head and forced him to drive away. The resulting police chase ended in a third party's death. *Gimotty* concluded that duress is not a defense to felony murder.

Later, *People v Henderson*, 306 Mich App 1, 5; 854 NW2d 234 (2014), lv den 497 NW2d 905; 856 NW2d 53 (2014), ruled that duress is not a defense to being an aider and abettor—the person who did not commit the murder:

> Defendant maintains that the principle that duress is not a defense to homicide is inapplicable when he did not actually commit the murder himself but was himself prosecuted primarily as an aider and abettor to murder. We fail to see the logic in this argument, and defendant provides no supporting authority that an aider and abettor to murder can employ a duress defense even though a principal is not entitled to do so.

As it is, *People v Carp*, unpublished opinion per curiam of the Court of Appeals, issued 12/30/08 (Docket no. 275084), lv den 483 Mich 1111; 766 NW2d 839 (2009), (an opinion signed by now Justice Zahra) is directly on point. In *Carp*, the defendant presented evidence that, during the robbery, the co-defendant stabbed the victim to death (and that the defendant had merely thrown a mug at the victim with it missing). After noting that some jurisdictions allow a duress defense to felony murder, *Carp* concluded that, because Michigan's felony-murder statute is different, duress is not a defense to Michigan's felony murder:

> Significantly, felony-murder in Michigan cannot be established solely by the intent to commit a felony. [*People v Aaron*, 409 Mich 672, 727; 299 NW2d 304 (1980)]. Rather, the requirement of malice to establish felony-murder is the same as the requirement of malice to establish second-degree murder; "the intent to kill, intent to do great bodily harm, or wanton and willful disregard of the likelihood that the natural tendency of a person's behavior is to cause death or great bodily harm." *Id*. at 727-728. Thus, a finding of felony-murder necessarily entails a finding of malice to establish second-degree murder. Given that duress is not a defense to second-degree murder, duress cannot be a defense to felony-murder. (Footnote omitted.) (P 6).[2]

At base, defendant's argument ignores just what Michigan's felony murder is. It is not a person committing a felony with a death resulting. That doctrine was abrogated in *People v Aaron*, 409 Mich 672, 727; 299 NW2d 304; 13 ALR4th 1180 (1980), which read felony murder, MCL 750.316(1)(b), as it is written: murder in the perpetration of an enumerated felony. If Michigan still used the common-law definition, then defendant would be right. Duress is a defense to armed robbery. That a death occurred does not affect the defense. Because Michigan does not still use the common-law definition, however, defendant is wrong. Duress is not a defense to second-degree murder. That an armed robbery also occurred does not matter.

Hence, the law from other States is irrelevant (as long as those States adhere to the common-law definition). Defendant fails to even claim that a single case that he cites from other jurisdictions happens to have the same felony-murder definition that Michigan has. That Michigan's statute is in the minority (if not actually unique) is a point lost on her.

Despite what defendant says, *People v Merhige*, 212 Mich 601; 180 NW 418 (1920), does not say that duress is a defense to felony murder. The opinion does not

[2] Defendant's claim that *Carp* is distinguishable ignores this language.

even use the word "murder." Instead, this case said that duress is a defense to armed robbery (something that no one contests). There, the defendant pled guilty to armed robbery. Because the factual basis so clearly showed duress, this Court found the factual basis insufficient for armed robbery. To repeat, even though someone had died in the armed robbery, this defendant pled to only armed robbery. A different question would have arisen had he pled to felony murder.

In any event, even if *Merhige* says what defendant claims that it does, at the time *Merhige* was decided, Michigan courts were applying the common-law felony-murder doctrine. Of course, Michigan abrogated that doctrine in *Aaron*, *supra*, 409 Mich 727. As pointed out above, *Aaron* read felony murder, MCL 750.316(1)(b), as it is written: murder in the perpetration of an enumerated felony, not an enumerated felony with a death resulting (as in the common law).

As it is, plaintiff's position is nowhere near as absolutist as defendant claims. Defendant may present whatever evidence she wants to show that she did not have the requisite malice. In other words, plaintiff is not asking this Court to restrict defendant's evidence. She may present evidence that she was so afraid of defendant that she did not have the requisite malice for the crime. Plaintiff instead is asking that the jury not be misinformed as to what the law is. That defendant not be allowed to claim both that she did not have the requisite malice and that, even if she did, she did what she did under duress. By law, she is allowed only one approach, not both.

The Court of Appeals correctly noted this point by saying: "What is lost in this case is that the real issue is not whether defendant was acting under duress, but

whether she actually aided and abetted a criminal homicide." (P 3). The opinion then continues:

> Thus, to convict defendant, the prosecutor will have to show that she intended to aid and abet. If the prosecutor is able to make this showing, then defendant will have knowingly participated in a homicide or, at a minimum, participated in a crime for which homicide was a natural and probable consequence. (Footnote omitted.) (P 4).

This decision is correct, no need exists to grant interlocutory leave to appeal.[3]

Second, defendant fails to comply with MCR 7.205(B)(1) requiring her to set "forth facts showing how [she] would suffer substantial harm by awaiting final judgment before taking an appeal." She does not even acknowledge this provision's existence. She does not even try to explain how she would be prejudiced by raising this issue in the appeal by right (assuming that she is convicted at trial and then appeals). After all, although the law-of-the-case doctrine would apply to the Court of Appeals in such an appeal by right, it would not apply to this Court. *People v Dalton*, 430 Mich 1202; 423 NW2d 215 (1987). This provision exists, of course, to minimize piecemeal appeals. As pointed out in *United States v Bergin,* 885 F3d 416, 419 (CA 6, 2018), allowing "piecemeal appeals" is "a serious concern for criminal cases."

ACCORDINGLY, plaintiff asks this Court to deny this interlocutory application for leave to appeal.

May 22, 2018

Respectfully submitted,

/s/ Jerrold Schrotenboer
JERROLD SCHROTENBOER (P33223)
CHIEF APPELLATE ATTORNEY

[3] Because this opinion is published, other than a Court of Appeals conflict panel being able to overrule it, it is just as binding in Michigan as an opinion from this Court. MCR 7.215(J)(1). If this Court agrees with this opinion, no need exists for it to also consider it.

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Brooke Slusher states that on May 22, 2018, she served a copy of: **ANSWER** upon:

MICHAEL A. FARAONE (P45332)
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by Truefiling.

/s/ Brooke Slusher

Brooke Slusher
Legal Secretary